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ACTION ARA-10

INFO OCT-01 IO-13 ISO-00 DHA-02 ORM-02 MCT-01 AID-05 SCS-03

SCA-01 SAM-01 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

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FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC 7478
INFO USUN NEW YORK 670
USMISSION GENEVA
AMEMBASSY MONTEVIDEO
AMEMBASSY SANTIAGO

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/IPS

Margaret P. Grafeld, Director

() Release () Excise () Deny

Exemption(s):

Declassify: () In Part () In Full

() Classify as () Extend as () Downgrade to

Date Declassify on Reason

[REDACTED] BUENOS AIRES 6648

E.O. 11652: GDS
TAGS: PGOV, SHUM, AR
SUBJECT: SUPREME COURT AND GOA AGREE ON LIMIT OF MILITARY JUSTICE
JURISDICTION

REF: BUENOS AIRES 6611

1. ARGENTINE SUPREME COURT HAS RULED THAT JURISDICTION OF
MILITARY JUSTICE SYSTEM OVER SUBVERSION AND ARMS CONTROL
VIOLATIONS APPLIES ONLY WHEN IT IS CLEAR THAT OFFENSE IS
ACTUALLY LINKED TO SECURITY OF NATION.

2. CASE AROSE LAST MAY IN WHICH INDIVIDUAL WAS DETAINED
IN SANTA CRUZ PROVINCE ON SUSPICION OF VILLATION OF ORDIN-
ARY CRIMINAL LAWS. WHILE BEING INTERROGATED IN POLICE
STATION, SUSPECT VERBALLY "CHIDED AND OFFENDED" POLICE
CHIEF. LOCAL CIVILIAN JUDGE, BACKED UP BY JUFICIAL AUTHORI-
TIES OF PROVINCE, DECLINED TO ACCEPT CHARGE PRESENTED BY
APPARENTLY OUTRAGED POLICE, HOLDING THAT THIS "ATTACK" ON
SECURITY FORCES CAME UNDER LAW GIVING COMPETENCE TO
MILITARY COURTS. COURT MARTIAL HAVING JURISDICTION OVER ZONE
IN TURN REFUSED TO HEAR CASE AS IT DID NOT INVOLVE ACTUAL

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SUBVERSION AND DID NOT AFFECT SECURITY OF NATION IN SENSE OF LAWS PLACING SUCH OFFENSES UNDER MILITARY COURTS. CASE REACHED SUPREME COURT WITH RECOMMENDATION OF GOA ATTORNEY GENERAL THAT IT BE PLACED UNDER CIVILIAN COURTS OF PROVINCE, CITING REASONING OF COURT MARTIAL THAT IT DID NOT AFFECT NATIONAL SECURITY OR THE SECURITY FORCES. SUPREME COURT AGREED AND INSTRUCTED LOCAL SANTA CRUZ PROVINCE CIVILIAN JUDGE TO ACCEPT JURISDICTION.

3. IN SOMEWHAT SIMILAR RULING, COURT HELD THAT FEDERAL CIVIL COURT IN CORDOBA HAD COMPETENCE IN CASE OF INDIVIDUAL CHARGED WITH ILLEGAL POSSESSION OF FIREARM CLASSIFIED AS "MILITARY WEAPON" (WHICH INCLUDES FOR EXAMPLE ANY PISTOL OR RIFLE OF MILITARY CALIBER), AS IT HAD NOT BEEN DEMONSTRATED THAT THE OFFENSE WAS LINKED TO SUBVERSIVE ACTIVITIES.

4. COMMENT. WE CONSIDER THESE HEARTENING DEVELOPMENTS, AS THEY DEMONSTRATE THAT ARGENTINA STILL HAS AN INDEPENDENT CIVILIAN JUDICIAL SYSTEM, AND THAT MILITARY THEMSELVES APPARENTLY RECOGNIZE SOME DEGREE OF RATIONALITY IN APPLICATION OF MILITARY JUSTICE TO "SUBVERSION" CASES. CIVILIAN COURTS ARE FORCED TO BE RECKONED WITH HERE, AND HAVE DISPLAYED INDEPENDENT JUDGMENT IN PAST FEW MONTHS OF MILITARY REGIME. GUIDELINES ARE NOT COMPLETELY CLEAR, AS IS ILLUSTRATED BY DIFFERING CIVILIAN JUDGES' INTERPRETATIONS OF APPLICABILITY OF GOA'S SUSPENSION OF CONSTITUTIONAL RIGHT TO OPT TO LEAVE COUNTRY RATHER THAN BE DETAINED UNDER STATE OF SIEGE PROVISIONS. ONE FEDERAL JUDGE HAS JUST RULED THAT SUSPENSION OF OPTION IS INEFFECTIVE AND HAS ORDERED GOA TO PERMIT DEPARTURE OF A DETAINEE (REFTEL), WHILE ANOTHER FEDERAL JUDGE HAS RULED THE OPPOSITE AND DENIED A PETITION TO LEAVE UNDER THE CONSTITUTIONAL OPTION. RATHER THAN SIMPLY ASSERT THAT CIVIL COURTS HAVE NO JURISDICTION IN STATE OF SIEGE MATTERS, GOA HAS SUBMITTED ITS CASE TO SUPREME COURT.

5. WE ARE WELL AWARE THAT MANY DETAINEES NEVER REACH COURT JURISDICTION, CIVIL OR MILITARY, BEING KILLED OR INDEFINITELY DETAINED BY SECURITY FORCES. IT IS ENCOURAGING, HOWEVER, THAT GOA AT LEAST RECOGNIZED PRINCIPLE OF INDEPENDENCE AND JURISDICTION OF CIVIL COURTS AND THAT CIVIL COURTS IN TURN SHOW CLEAR EVIDENCE OF SOME WILLINGNESS TO DECLARE LIMITS TO

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GOVERNMENT'S POWERS IN SECURITY (AND THUS HUMAN RIGHTS)
MATTERS.
HILL

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